

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NICHOLAS SHIFLETT,

Petitioner,

v.

D. SABATKA-RINE, PHD A.
CARBAUGH, ROBERT MADSEN,
BOGGS, Caseworker, SCOTT
FRAKES, C. CONNELLY, M.
ROTHWELL, and PH.D A.
MITWARUCIU,

Respondents.

8:18CV268

MEMORANDUM AND ORDER

The unopposed motion for summary judgment (filing no. 12) will be granted and the petition for writ of habeas corpus will be denied and dismissed without prejudice. Petitioner contends that he has been denied a loss of good time, and seeks habeas corpus relief presumably because that loss of good time extends his time in prison.

As Respondents both prove (filing no. 13) and argue (filing no. 14), Petitioner has not exhausted his remedies under state law seeking to obtain restoration of good time. A prisoner seeking restoration of good time may do so via a federal petition for writ of habeas corpus *providing* the petitioner shows that he has exhausted state remedies. *Offet v. Solem*, 823 F.2d 1256, 1258 (8th Cir. 1987). Petitioner has not done so.

A petitioner cannot appeal an adverse ruling on his petition for writ of habeas corpus under § 2254 unless he is granted a certificate of appealability. 28 U.S.C. § 2253(c)(1); 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1). The standards for certificates (1) where the district court reaches the merits or (2) where the district

court rules on procedural grounds are set forth in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). No matter what standard is applied, Petitioner has failed to make the requisite showing.¹ Accordingly, I will not issue a certificate of appealability in this case.

IT IS ORDERED the motion for summary judgment (filing no. 12) is granted. The petition for writ of habeas corpus (filing no. 1) is denied and dismissed without prejudice. No certificate of appealability has been or will be issued. Judgment will be entered by separate document.

DATED this 9th day of October, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge

¹ Indeed, he has made no showing whatever.